

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Phillip Davis,

Petitioner(s),

vs.

Warden, Lebanon Correctional Institution,

Respondent(s).

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Case Number: 1:18cv803

Chief Judge Susan J. Dlott

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Karen L. Litkovitz filed on December 6, 2018 (Doc. 4), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired December 20, 2018, hereby ADOPTS said Report and Recommendation.

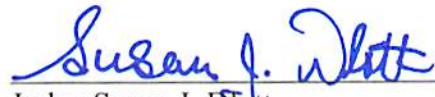
Accordingly, petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is DISMISSED without prejudice.

A certificate of appealability will not issue with respect to any Order adopting the Report and Recommendation to dismiss the instant habeas corpus petition on the procedural ground of duplicativeness. Under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000) "jurists of reason" will not find it debatable whether the Court is correct in its procedural ruling.

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court certifies pursuant to 28 U.S.C. §1915(a)(3) that an appeal of any Order adopting the Report

and Recommendation will not be taken in “good faith,” therefore, petitioner is DENIED leave to appeal *in forma pauperis* upon a showing of financial necessity. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.



Judge Susan J. Dlott
United States District Court